

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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TIMOTHY DURLEY,

Plaintiff,

v.

Case No. 20-cv-1890-pp

NURSE BRIAN TAPLIN,  
SERGEANT TIMOTHY KUTEA,  
and SERGEANT KYLE DITMERS,

Defendants.

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**ORDER DISMISSING SERGEANT TIMOTHY KUTEA FOR PLAINTIFF'S  
FAILURE TO PROSECUTE CLAIM AGAINST HIM**

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On April 19, 2021, the court issued a scheduling order setting deadlines for completing discovery and filing dispositive motions. Dkt. No. 16. The court ordered the parties to complete discovery no later than September 20, 2021 and ordered that any party wishing to file a motion for summary judgment must do so by October 20, 2021. Id. at 1-2. The court also explained that the Wisconsin Department of Justice had been unable to identify the defendant to whom the plaintiff had referred in his complaint as "Sergeant Timothy Kutea." Id. at 2; see Dkt. No. 13 (DOJ's Acceptance of Service). The court ordered the plaintiff to "use discovery to identify the proper name of this defendant." Dkt. No. 28 at 2. The court told the plaintiff that once he identified the defendant, he should file a motion to substitute the defendant's proper name for the "Sergeant Timothy Kutea" placeholder. Id. The court ordered the plaintiff to identify the defendant by July 2, 2021. Id. The court advised the plaintiff that if

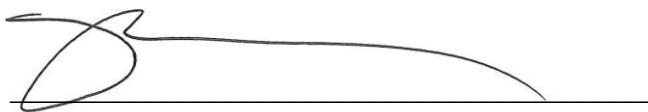
he did not identify the person he'd referenced as "Sergeant Timothy Kutea" by that deadline, "the court may dismiss him from this case." Id.

The July 2, 2021 deadline has passed. The plaintiff has had over two and a half months to identify the defendant. While the court notes from the Wisconsin Department of Corrections inmate locator web site that the plaintiff was in a local jail for court appearances for five days in May and six days in June, he still has had time to conduct discovery. The plaintiff has not filed a motion to substitute the proper name for Sergeant Timothy Kutea, nor has the plaintiff asked the court for additional time to conduct discovery and identify this defendant. The court will dismiss Sergeant Timothy Kutea because the plaintiff has failed to prosecute his claim against him. See Civil Local Rule 41(c) (E.D. Wis.) ("Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice.").

The court **ORDERS** that defendant Sergeant Timothy Kutea is **DISMISSED** under Civil L.R. 41(c) because the plaintiff has failed to diligently pursue his claim against him.

Dated in Milwaukee, Wisconsin this 13th day of July, 2021.

**BY THE COURT:**



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**HON. PAMELA PEPPER**  
**Chief United States District Judge**